

## HUMAN SERVICES BOARD

# INTRODUCTION

## FINDINGS OF FACT

2. In August 2007 petitioner was found eligible for Social Security disability benefits (SSDI) of \$888 a month.

The petitioner did not immediately report the receipt of this additional income to the Department.

3. In October 2007 the petitioner underwent a periodic review of his eligibility for Food Stamps. It was at this time that the petitioner first reported his SSDI income. The Department initially determined that the petitioner's SSDI and trust income made him ineligible for Food Stamps.

4. Following the petitioner's appeal of this decision (Fair Hearing No. 21,196), the Department agreed to recalculate the petitioner's income for the year 2007 based on the timing of his receipt of payments from his trust. Based on those recalculations the parties agreed to the amount of the petitioner's Food Stamps as of October 2007, which settled the issue in that fair hearing.

5. However, in a subsequent decision the Department determined that the petitioner had been overpaid Food Stamps for August and September 2007 in the amount of \$28, which led to this appeal. The petitioner maintains that he was underpaid for those months, and he is seeking reimbursement for that alleged underpayment.

6. For August and September 2007 there is no dispute as to the Department's determination of the petitioner's income. The issue is whether the Department must factor in the

petitioner's disability in calculating his shelter expense deduction for those months.

ORDER

The Department's decision is modified to reflect that the petitioner was neither overpaid nor underpaid for the months in question.

REASONS

In determining income for Food Stamps eligibility a household's excess shelter costs can be counted as a deduction from that household's income. W.A.M. § 273.9(d)(5). In most cases the shelter deduction is subject to a maximum set by the regulations, which is currently \$446. Id., Procedures Manual § P-2590(A)(4). However, for households containing an individual who is elderly or disabled there is no maximum to that household's shelter deduction. Id. § 273.9(d)(5)(1). The regulations define "disabled" as "receiving" Social Security or SSI disability benefits. There is no question in this case that the petitioner met this definition as of August 2007. Id. § 271.2.

The regulations also require households to report changes in circumstances within ten days and the Department

to act on those reported changes within thirty days. Id. § 273.12. As noted above, there is no dispute in this case that the petitioner did not report his receipt of SSDI benefits to the Department until October 2007.

In this case, once the Department belatedly learned of the petitioner's disability and his receipt of Social Security benefits in October 2007, and subsequently reconsidered the timing of the petitioner's receipt of his trust income for 2007, it recalculated the amount of the petitioner's Food Stamps as of October 2007 based on the amount of his combined unearned income, subject to an unlimited shelter deduction because of his disability. It appears that this resulted in an increase in the petitioner's Food Stamps as of October 2007.

However, for August and September 2007 the Department counted the petitioner's Social Security *income*, but it did not allow him an unlimited shelter deduction because the petitioner had been two months late in reporting this income and his resultant *disability*. Instead, the Department allowed the petitioner only the maximum (capped) shelter deduction for those months. Using this calculation of income and allowable shelter expenses the Department determined that

the petitioner was overpaid Food Stamps for August and September 2007 by \$28.

The petitioner maintains that he should be allowed an unlimited shelter expense for those months. He argues not only that he was not overpaid Food Stamps for those months, but also that he should retroactively receive whatever amount of Stamps he was "underpaid" as a result of the Department's failure to credit him retroactively with an unlimited shelter deduction for those months.

Turning first to the petitioner's claim of an underpayment, the regulations allow "restoration of lost benefits" only in situations where *the Department* made an "error" in calculating the household's entitlement or when there is a "judicial action" finding that the benefits in question were "wrongfully withheld". Id. § 273.17(a). Neither provision applies to the petitioner in this case. There is no dispute that the petitioner did not report his disability status to the Department until October 2007. Thus, there can be no finding of Department error or wrongful withholding of benefits by the Department for the months of August and September 2007. Therefore, there does not appear to be any provision in the regulations for the petitioner to

claim an underpayment of Food Stamps under the circumstances of this case.

However, the Department's determination that there was an *overpayment* of Food Stamps to the petitioner for those months is another matter. In calculating the amount of any alleged overpayment the Department is required to first determine the "correct amount of food stamp benefits, if any, the household was entitled to receive". Id. § 273.18(c). In this case the Department maintains that the petitioner's untimely reporting of his disability status means that his disability, even though it existed, cannot be factored into any subsequent determination of the "correct amount" of benefits he should have received for those months. Thus, in determining the petitioner's overpayment, the Department has factored the amount of unreported *income* the petitioner received, but it has not allowed him the benefit of all the *deductions* he would have received had he timely reported the source and amount of his income. It must be concluded that this punitive approach to overpayment calculations is entirely unwarranted under the regulations.

The regulations regarding overpayment calculations (Id. §§ 273.18 *et seq.*) contain only a single mention of factoring in the timeliness of the household's reporting of any

information in question. That provision is a specific rule disallowing a claim for an earned income deduction in overpayment cases where earned income is not timely reported by the household. Id. § 273.18(c)(1)(B). The Department argues that this provision amounts to a "policy" that is "manifested" throughout the *entire* section on overpayment calculations, namely "that a household should not benefit from its own delinquency in reporting". This sweeping assertion not only disregards the plain meaning of "correct amount", but also renders superfluous and unnecessary the section regarding the treatment of earned income disregards.

The Department's position also ignores an obvious difference in failing to report earned income as opposed to one's disability status. A deduction from earned income is always just that—a deduction. There can be no case in which an earned income deduction exceeds the earned income itself. Disability status is something that *might or might not* be offset or overcome by a simultaneous receipt of disability benefits. It depends entirely on the *amount* of the disability benefits. In cases in which the disability benefits are modest, but shelter expenses are high, it can often be to a household's detriment (in terms of failing to receive a prompt increase in Food Stamps) to timely report.

In this case, given that the petitioner cannot claim an *underpayment* of Food Stamps for the months in which he did not report his change in circumstances (see *supra*), once the Department recalculated the petitioner's trust income it appears that the petitioner had only hurt himself in not reporting his disability status and SSDI income in a timely manner. What "policy" is served by in effect penalizing him twice by determining that there was also an *overpayment* during the two months of his non-reporting when, in fact, there was none.

Thus, it must be concluded that the only reasonable reading of the term "correct amount" as it is used throughout the sections regarding overpayments is its plain meaning, i.e., the amount of Food Stamps that should have been paid to the household had the Department known all the facts pertinent to the calculation of that amount, the one *exception* being the consideration of earned income deductions in cases of a household's untimely reporting of earned income. Accordingly, this aspect of the Department's decision in this matter finding that the petitioner was overpaid Food Stamps during August and September 2007 must be reversed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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